

REMARKS

The Office Action mailed November 17, 2003 set an initial three (3) month period for response. Applicants note that submitted herewith is a Petition under 37 C.F.R. § 1.136(a) for a one month extension of time and a request that Applicant's attorney's deposit account be charged for the required fee. With the granting of this Petition, the time period for submitting a timely response to the Office Action mailed November 17, 2003 will be extended to March 17, 2003.

Also submitted herewith is a Notice of Appeal and a request that Applicants' attorney's Deposit Account be charged for the required fee.

Claims 2, 4 and 5 have been finally rejected. (The Examiner has indicated claims 1, 6 and 7 as allowed.) Applicants submit that the present response will put the present application in condition for allowance or, alternatively, will clarify issues on appeal and, thus, is properly presented at this time. Applicants request that this response be fully considered by the Examiner.

Status of Pending Claims

Claims 1, 2 and 4 to 7 are pending. The Examiner has indicated that claims 1, 6 and 7 were allowed. Claims 2, 4 and 5 are finally rejected.

The Section 112, First Paragraph Rejection

Claims 2, 4 and 5 stand rejected under 35 U.S.C. § 112, first paragraph, for asserted lack of written description.

Applicants, note that the Examiner appears to base the present rejection, at least in part on asserted lack of biological testing data.

As they have previously noted, Applicants believe that the Examiner's position is not well taken.

In order to expedite prosecution of this application and allowance of claims 2, 4 and 5, Applicants submit herewith a Declaration pursuant to 37 C.F.R. § 1.132 made by one of the inventors which provides IC₅₀ data for certain of the compounds whose use is claimed.

Applicants maintain their previous position that claims 2, 4 and 5 were in compliance with the requirements of the first paragraph of Section 112. Applicants further note that when those claims are considered in view of the data presented in the concurrently submitted Declaration of Edwin L. Madison Pursuant to 37 C.F.R. § 1.132, it is clear that Applicants were fully in possession of the claimed invention.

Applicants request that the Examiner reconsider this rejection in view of the foregoing and withdraw it.

CONCLUSION


In view of the foregoing, Applicants submit that the rejection of claims 2, 4 and 5 has been overcome and that those claims are allowable. Applicants note that the Examiner has indicated that claims 1, 6 and 7 were allowed. Applicants request that the claims be allowed and passed to issue.

If the Examiner believes that a telephonic interview would expedite allowance of this application, she is encouraged to

telephone Applicants attorney of record, Suzanne L. Biggs at the below-noted telephone number.

The Commissioner is hereby authorized to charge any fee, including any fee due with this submission, if the request to change the deposit account is in the wrong amount or otherwise improper or missing, that may be due in connection with this and the attached papers, or with this application during its entire pendency to or to credit any overpayment to Deposit Account 50-2212, Order No. 018813-0278799.

Respectfully submitted,
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By 
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Dated: March 16, 2004

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